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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,423	04/21/2005	Jaume Prat Terradas	30607/40513	4333
4743 7590 03/19/2008 MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606				
EXAMINER				
LUONG, VINH				
ART UNIT		PAPER NUMBER		
3682				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/510,423

Applicant(s)

TERRADAS ET AL.

Examiner

Vinh T. Luong

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2007 and January 31, 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-12 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 January 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on November 13, 2007 and January 31, 2008 have been entered.
2. The drawings were received on January 31, 2008. These drawings are accepted by the Examiner.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 8-12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Nawata et al. (USP No. 5,996,440 cited as an X reference in International Search Report of Applicant's corresponding PCT Application).

Regarding claim 8, Nawata teaches, e.g., in FIGS. 23-26, a pedal security system for pedal mounting, particularly in motor vehicles, comprising:

a pedal 130 rotatably mounted by means of a pedal axis 146;

an opening (unnumbered, the opening is formed on the pedal 130 wherein the bolt 146 passes therethrough as seen in FIG. 24) for receiving and retaining the pedal axis 146; and

a slot 168A adjacent to the opening (FIG. 24);

the pedal axis 146 engages the first wall 168C and breaking the first wall 168C by exceeding a mechanical limit loading of the pedal axis 146 whereby the slot 168A receives the pedal axis 146. *Ibid.* col. 27, lines 25-51.

Claim 8 and other claims below are anticipated by Nawata since Nawata teaches each and every claimed element. It is well settled that the term “adjacent” does not require absolute contact, but requires relatively close position. *Ex parte Hadsel*, 109 USPQ 509 (BPAI 1956). Adjacent is broader than side by side. *Ex parte Appeldorn & Gilkeson*, 159 USPQ 791 (BPAI 1967).

Regarding Claim 9, a pushing element 166 cooperates with the pedal axis 146 to transmit a load to the pedal axis 146 thereby forcing the pedal axis 146 into the slot 168A when the load exceeds the mechanical limit loading of the pedal axis 146.

Regarding Claim 10, the slot 168A defines a predetermined displacement path of the pedal axis 146.

Regarding Claim 11, the slot 168A is formed by an elongated hole (FIG. 25) which is partly closed by the lateral walls 168B and 168C projecting therein.

Regarding Claim 12, the lateral walls 168B and 168C are bent, dismounted, or pushed away from the expandable slot 168A in response to the mechanical limit loading by the pedal axis 146.

Regarding Claim 14, said opening for receiving the pedal axis 146 and said slot 168A are arranged in a pedal block 30.

5. Applicant's arguments filed November 13, 2007 and January 31, 2008 have been fully considered but they are not persuasive.

DRAWINGS

Applicant contended that the objection to the drawings in the final Office action on August 10, 2007 was improper because it repeated issues raised with previous drawings.

The Examiner respectfully submits that the above objection was proper because the replacement drawings filed on August 2, 2007 were not accepted by the Examiners. See the Office action on August 10, 2007. Therefore, the replacement drawings filed on August 2, 2007 have not been entered. Similarly, the replacement drawings filed on October 6, 2004 were not accepted by the Examiners. See the Office action on April 2, 2007 and Notice of Non-Compliant Amendment on February 6, 2007. Therefore, the replacement drawings filed on October 6, 2004 likewise have not been entered. Consequently, the objection to the original drawings was still in effect on the date of the Office action on August 10, 2007.

Applicant further asserted that the numeral “52” to designate the “lateral walls” that “are formed by arbitrary arrangement of ribs or webs,” which ribs or webs are not designated with reference to numeral “52” but remain unnumbered. Applicant’s position was that to number the “ribs or webs” separately would inhibit, not promote clarity.

As noted, MPEP 608.01(g) states:

The reference characters must be properly applied, no single reference character being used for two different parts or for a given part and a modification of such part. In the latter case, the reference character, applied to the given part, with a prime affixed may advantageously be applied to the modification. Every feature specified in the claims must be illustrated, but there should be no superfluous illustrations. The description is a dictionary for the claims and should provide clear support or antecedent basis for all terms used in the claims. See 37 CFR 1.75, MPEP § 608.01(i), § 608.01(o), and § 1302.01. (Emphasis added).

Moreover, in *Phillips v. AWH Corp.*, 415 F.3d 1303 [75 USPQ2d 1321] (Fed. Cir. 2005) (*en banc*), the court set forth the best practices for claim construction. According to that decision, the words of a claim “are generally given their ordinary and customary meaning.” *Id.* at 1312. The ordinary and customary meaning “is the meaning that the term would have to a person of

ordinary skill in the art in question.” *Id.* at 1313. For this reason, “claims must be read in view of the specification, of which they are a part.” *Id.* at 1315. (internal quotations omitted). The specification “is the single best guide to the meaning of a disputed term.” *Id.*

In the instant case, Applicant claimed the “ribs or webs” in the Amendment filed on August 5, 2007. Therefore, Applicant should have had proper reference characters to indicate the claimed “ribs or webs.” MPEP 608.01(g) *supra*. Otherwise, the meaning of the term “ribs or webs” may not be ascertained in connection with the specification, drawings, and prosecution history. *Bausch & Lomb, Inc. v. Barnes/Hydrocurve Inc.*, 230 USPQ 416 (CAFC 1986) and cases cited therein.

In the amendment filed on November 13, 2007, Applicant deleted the features “ribs or webs” in Claim 8. Hence, the requirement of reference characters to indicate the “ribs or webs” is withdrawn in this Office action.

With respect to the reference character “20,” Applicant admitted that “the present pedal module 1 comprises *two different pedals 20*” (emphasis added).

Note that 37 CFR 1.84(p)(4) states “[t]he same part of an invention appearing in more than one view of the drawing must always be designated by the same reference character, and *the same reference character must never be used to designate different parts.*” (Emphasis added). Therefore, Applicant should have used, *e.g.*, two different reference characters, such as, 20 and 20’ to indicate *two different pedals*.

On January 31, 2008, Applicant submitted new sheets of drawings to show the first and second walls 52a and 52b in amended Claim 8. The Examiner accepts these drawings. However, the Examiner respectfully submits that 35 USC 113 states: “[d]rawings submitted after the filing

date of the application may not be used (i) to overcome any insufficiency of the specification due to lack of an enabling disclosure or otherwise inadequate disclosure therein, or (ii) to supplement the original disclosure thereof for the purpose of interpretation of the scope of any claim.” Please see also 37 CFR 1.81(d).

35 USC 112

The rejection based on 35 USC 112 is withdrawn in view of Applicant’s amendment.

35 USC 102

The rejections based on Ananthasivan et al. (EP 0 997 361 B1) and Mueller et al. (US Patent No. 6,786,109) are withdrawn in view of Applicant’s amendment to the claims. Applicant’s arguments with respect to claims 8-12 and 14 have been considered but are moot in view of the new ground(s) of rejection.

CONCLUSION

For the foregoing, the Examiner respectfully submits that all of the pending claims of the instant application are not in condition for allowance.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vinh T Luong/

Primary Examiner, Art Unit 3682

January 31, 2008